

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, . Case No. 13-CR-00362  
vs. .  
GERSHON BARKANY, . 824 Federal Plaza  
Defendant. . Central Islip, NY  
. . June 26, 2013  
. . . . .

TRANSCRIPT OF PLEA HEARING  
BEFORE HONORABLE ARLENE R. LINDSAY  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For The Government

UNITED STATES ATTORNEYS OFFICE  
EASTERN DISTRICT OF NEW YORK  
BY: CHRISTOPHER C. CAFFARONE, ESQ  
610 Federal Plaza  
Central Islip, NY 11722

For The Defendant:

BARKET MARION EPSTEIN & KEARON, LLP  
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I N D E X

WITNESS

COURT

GERSHON BARKANY

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Colloquy

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1 COURT CLERK: Calling 2013-CR-362, the United States  
2 of America against Gershon Barkany. Please state your  
3 appearances.

4 MR. CAFFARONE: Chris Caffarone for the United  
5 States. Good afternoon Your Honor.

6 THE COURT: Yes, good afternoon.

7 MR. BARKET: Good afternoon Your Honor, Bruce Barket  
8 for Mr. Barkany.

9 THE COURT: All right, good afternoon Mr. Barket.  
10 So Mr. Caffarone what is the Government's application today?

11 MR. CAFFARONE: Yes, Your Honor. The defendant and  
12 the Government have a joint application to have the  
13 defendant's bail modified. Currently he's on home detention.

14 The modification would change the home detention to  
15 a curfew which allows him to be out to work or allows him to  
16 be out between the hours of 6:00 a.m. and midnight with an  
17 electronic monitoring bracelet that will be triggered if he's  
18 not in the residence between the hours I guess of midnight  
19 and 6:00 a.m.

20 The other addition was a travel enhancement. We'd  
21 allow him to travel not only in the eastern and southern  
22 districts of New York but also the District of New Jersey  
23 where his parents reside.

24 And then the final restriction was a restriction to  
25 address his gambling problem which he has a history of having

## Colloquy

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1 a gambling issue. We'd ask that Your Honor impose a  
2 restriction that he not gamble or enter any gambling  
3 establishments. And this will allow him hopefully to work  
4 and potentially repay some of the victims that have not been  
5 repaid to date. So we believe that this is a reasonable  
6 condition. We ask that Your Honor endorse the application.

7 THE COURT: What's the expectation as to where he's  
8 going to work?

9 MR. CAFFARONE: He has a number of business deals  
10 it's my understanding. He can address this better. That  
11 don't, they're not done out of the office. He has to go to  
12 business meetings in the city. He may have to also travel  
13 through New Jersey for some of these deals. I don't know the  
14 specifics.

15 THE COURT: Well Mr. Caffarone I'm concerned here.  
16 Because one of the, you know, the obvious allegations here  
17 that, you know, he engaged in investor fraud to the extent of  
18 \$60 million. Is he going to be involved in investments  
19 again?

20 MR. CAFFARONE: Your Honor I believe the deals,  
21 obviously there is the risk that he go and commit more fraud.  
22 I believe that that risk is not great because he's going to  
23 be monitored by his attorney.

24 THE COURT: By who?

25 MR. CAFFARONE: By Mr. Barket. Is going to make

## Colloquy

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1 sure that this defendant, who's going to plead guilty and  
2 going to be facing, he's going to be out on bail. He's got  
3 Judge Wexler who is presiding over his case. If this  
4 defendant goes and while he's on bail commits more fraud, the  
5 penalties are going to be severe. And I think he understands  
6 that. In my meeting with him I think he understood that.

7 I know Mr. Barket is putting this defendant in a  
8 position that he hopes to be able to make full restitution or  
9 be able to argue to Judge Wexler that he's made great  
10 strides. He's met with the government and agreed to  
11 cooperate with us to try to trace money that he took from  
12 victims with the hopes that we can get that money back and  
13 repay victims.

14 He worked with the first set of victims before the  
15 government had even arrested him to try to get them money  
16 back. He voluntarily gave over assets. He voluntarily gave  
17 over some monies.

18 So my hope, obviously I'm not clairvoyant. But  
19 those risks are enormous for him. If he were to go and  
20 commit more fraud while he's out, he's going to be in a very,  
21 very bad situation when it comes time to be sentenced before  
22 Judge Wexler.

23 And I think that the government feels comfortable  
24 taking that risk here, because I believe Mr. Barket is  
25 involved. I believe he's going to insure that that doesn't

## Colloquy

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1     happen. And if it does, there are going to be severe  
2     penalties.

3             THE COURT: And how, Mr. Barket how are you going to  
4     insure that doesn't happen? Are you going to obtain reports  
5     from your client as to what he's involved in?

6             MR. BARKET: Yes, Your Honor. Obviously the purpose  
7     here is to raise funds, significant funds, to --

8             THE COURT: That's my concern.

9             MR. BARKET: To repay the investors that lost money  
10    when they invested with him in, during the course of the  
11    fraud. So there's going to be a microscope on all of the  
12    transactions he's involved in.

13            THE COURT: Who's going to be behind the microscope?

14            MR. BARKET: Well initially the transactional  
15    lawyers that we're going to hire to do the transactional  
16    work. And then my firm, as we deal with the proceeds of  
17    this. Because we're going to be taking the proceeds of the  
18    investments or the business deals and transferring them to  
19    the government or ultimately to the investors. None of us --

20            THE COURT: So when you say your firm, are you  
21    suggesting that you're going to assume responsibility here  
22    for the defendant's transactions. And at least monitor his  
23    transactions in such a way as to assure, insure that there is  
24    no additional fraud? Are you going that far?

25            MR. BARKET: I'm certainly doing those things. The

## Colloquy

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1 part of the responsibility, -- there's no -- we spoke about  
2 this in putting together this application and whether or not  
3 he submit to the government each of the investments or  
4 investment activities he was involved in for them to review.  
5 Whether they're going to submit it to us.

6 And the resolution was that we would be, my firm  
7 would be looking at the transactions to make sure that they  
8 were not fraudulent in the second instance.

9 THE COURT: And why did the government choose not to  
10 get involved in that?

11 MR. CAFFARONE: Well Your Honor --

12 THE COURT: Or is that not a choice?

13 MR. CAFFARONE: No, we were offered that choice.  
14 And the government is not going to monitor all his business  
15 dealings to determine whether they are fraudulent or not.  
16 We're not going to give declaratory judgments, signing off on  
17 a deal.

18 I spoke with the FBI agent on the case and we trust  
19 the defendant to know the difference between a fraudulent  
20 deal, a legitimate deal and a fraudulent one. We trust Mr.  
21 Barket to know the difference between a fraud and not a  
22 fraud.

23 This case was pretty straightforward in -- I mean  
24 it doesn't take someone with Mr. Haggerty's experience to  
25 know whether this was a fraud or not. He said there were

1 deals. There were no deals.

2 If Mr. Barket is doing his due diligence which I  
3 have no reason to believe he won't, he should be able to  
4 realize this is a deal you can do, this is a deal you cannot.  
5 But we don't want to --

6 THE COURT: I'm confounded by the Government's  
7 position. You know, if the charge wasn't that this  
8 gentleman, Mr. Barkany, had engaged in, you know, in a fraud  
9 inducing investors to invest \$60 million. So obviously, you  
10 know, he's got the wherewithal to get people of substantial  
11 means to make investments with him on virtually nothing.

12 I mean it sounds from my reading of the  
13 information, he induced people to invest in deals that didn't  
14 exist. I'm not so sure, I'm having difficulty understanding  
15 your application to release him to go do business of a  
16 substantial nature. Because presumably this is meant to cure  
17 some of the losses that the victims incurred in this scam  
18 that's charged.

19 So send him out there to go and engage in a  
20 substantial amount of business without some oversight. Now I  
21 understand Mr. Barket's firm is willing to get involved and  
22 do what it can to, or what they can to oversee the thing.  
23 But the Government's decision to just take a hand's off  
24 approach because you don't want to be involved in monitoring,  
25 is confounding to the Court.



## Colloquy

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1 MR. BARKET: It actually, if I may Judge, it  
2 actually in discussing this with the Government, it actually  
3 ended up making more sense for us to look at this rather than  
4 the government. Because you wouldn't want to have the  
5 Government, you wouldn't want to give Mr. Barkany, if I can  
6 phrase this correctly, an added plus having been involved.

7 In other words, you wouldn't want to be able to  
8 have him say to the investors or people he's dealing with who  
9 are going to know about his history, -- you wouldn't want  
10 them to be able to say to them well look, you know that this  
11 particular deal is good because the FBI has signed off on it.  
12 That would --

13 THE COURT: Well I think that overstates the case.  
14 I don't think the FBI's going to sign off on anything.  
15 Neither is the Government going to sign off on anything. But  
16 what the Government can at least take a look at is to make  
17 sure, I mean the prior scam was he got people to invest in  
18 real estate deals and he never purchased real estate. There  
19 was no such thing. It was air.

20 I mean at least the Government would be able to  
21 insure we're not engaging in air deals again.

22 MR. BARKET: No, well certainly we'll be able to  
23 insure that. That part is relatively --

24 THE COURT: And are you committed to doing what if  
25 you discover that the defendant's involved in further elicited

## Colloquy

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1 transactions? What are you, -- what steps is your firm  
2 prepared to take? Have you thought that one through? Are  
3 you going to reveal it to the Government?

4 MR. BARKET: Your Honor, there is a two year history  
5 here. Part of which I don't think is in the complaint, is  
6 that the original fraud here for about \$56 million was self-  
7 disclosed in part by Mr. Barkany to the investors.

8 He then met with them, signed off on a confession  
9 of judgment and a number of other things. And literally  
10 worked with them over a couple of years to get back to them  
11 somewhere between, depending on the value of the assets,  
12 somewhere between \$15 and \$30 million.

13 Then he was arrested. He's not been, curiously,  
14 prohibited from engaging in business for the last several  
15 months by a condition of the bail. What he has been  
16 prohibited from doing is leaving his house with some  
17 exceptions.

18 What we're proposing now is to have his travel be  
19 increased or unlimited within the three districts that we  
20 spoke of. The condition concerning his ability to work or  
21 not is actually not one of the things that we're going to,  
22 we're seeking to change because it's not, it wasn't  
23 previously prohibited.

24 THE COURT: Well it wasn't previously prohibited in  
25 my opinion because the Court at that time saw that this man

## Colloquy

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1 was on lock down and under house arrest. And so his ability  
2 to engage in business and meet clients and develop the kind  
3 of business that is charged in the information, was going to  
4 be really very, very restricted based on the conditions of  
5 confinement.

6 MR. BARKET: And --

7 THE COURT: But now I'm being asked to permit this  
8 defendant to have basically freedom, you know, from 6:00 a.m.  
9 to 12:00 p.m. which is presumably well beyond the amount of  
10 the normal workday schedule. So he's, so there really isn't  
11 much of a restriction. And to the extent that he's out and  
12 about -- and with the specific purpose of putting him out  
13 there to engage in business. Now that's what's going on.

14 And so you've offered to monitor the defendant's  
15 activities. But I want to know, -- okay, you monitor the  
16 defendant's activities which gives the Court some assurance  
17 that there's been, there's some oversight because the  
18 Government doesn't want to get involved with it.

19 But what are you going to do if you discover that  
20 the defendant is at it again? What are you prepared to do?

21 MR. BARKET: Obviously we're not going to  
22 participate at all in the, in any such thing. And within  
23 the rules, ethical rules, we'd have to comply with the  
24 ethical rules. We wouldn't be free to breach those in any  
25 way.

## Colloquy

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1 THE COURT: So you wouldn't be telling the  
2 Government there's a problem, right? And you wouldn't be  
3 telling the potential victims there's a problem?

4 MR. BARKET: Well, but there's --

5 THE COURT: Am I correct?

6 MR. BARKET: I don't think that there's a way that  
7 we would be able to discover the fraud without, with the  
8 fraud being committed.

9 The kind of deals and business investments that he  
10 has proposed involve, will involve, -- the transactional  
11 lawyers won't be of our firm. They'll be of much larger  
12 firms probably in Manhattan, that will do the transactional  
13 work for him. We'll be monitoring what happens with that.  
14 The idea that somehow he would engage in some fraud, flagrant  
15 fraud and that I would find out about it, seems, anything is  
16 possible. But it seems --

17 THE COURT: You're right. It would be more than  
18 unwise for him to do that, I understand that. But we are  
19 dealing with a defendant who has done this, okay. So it's  
20 not something outside his character, let's put it that way.

21 Although I'm not trying to assign a specific  
22 character to the defendant. But we now have, I mean very  
23 reliable information, probable cause to believe because he  
24 hasn't pled guilty yet, but at least probable cause to  
25 believe that he's engaged in this kind of fraud.

## Colloquy

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1           So when you tell me that you're prepared to  
2 monitor, monitoring means nothing unless the monitor has some  
3 ability to take action. And you don't.

4           MR. BARKET: Excuse me for one second.

5           THE COURT: I mean that's a concern I have. I mean  
6 I understand --

7           MR. BARKET: I'm sorry, I just wanted to speak, my  
8 client wants to speak to me.

9           THE COURT: Yes, go ahead.

10          (Counsel and client confer)

11          MR. BARKET: Thank you. Just so the Court is aware  
12 of what's going, Mr. Barkany is willing to sign a waiver  
13 allowing for the disclosure if we discover fraud in the  
14 business dealings. Frankly and I appreciate that. It  
15 certainly is consistent with what I, if I'd asked him, I'm  
16 sure, I would have imagined he would have agreed to that.

17          But my concern with my firm being in some kind of  
18 quasi law enforcement role where not only --

19          THE COURT: But you volunteered to do it Mr. Barket.

20          MR. BARKET: If I may Judge.

21          THE COURT: Yes.

22          MR. BARKET: I volunteered, and we've set this up so  
23 that we would be, -- because we're going to be involved in  
24 the transactions because the money is going to be coming to  
25 us.

Colloquy

14

1 THE COURT: Right.

2 MR. BARKET: To repay the investors. So I'm going  
3 to have to know the source of the money. I'm obviously going  
4 to be dealing with a regular basis with whoever does the  
5 transactional work for him. Some of these things, most of  
6 them are rather complicated. And so I'll know what's going  
7 on.

8 THE COURT: But your knowledge is going to be  
9 transmitted to whom, if there's a problem?

10 MR. BARKET: My knowledge would be secondary to the  
11 knowledge of the transactional lawyers who would have to be  
12 involved in the fraud as well.

13 THE COURT: But their job is not to monitor. Your  
14 job is to monitor.

15 MR. BARKET: But the lawyers, it's not as if the  
16 lawyers other than the fact that they're monitoring would be  
17 free to participate --

18 THE COURT: Mr. Barket I can't accept that. That  
19 package doesn't work for me, okay. You're telling me that,  
20 you proposed something with the Government. And the proposal  
21 is that to the extent that the concern of the Court is that  
22 this defendant is going to be released and encouraged to go  
23 out and conduct business, business transactions perhaps of  
24 the very same type that he's charged with defrauding  
25 investors.

## Colloquy

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1           And I'm not saying he's going to go out and engage  
2     in fraud. I'm not presuming that at all. But to the extent  
3     that the Court had a concern that somebody be looking over  
4     the defendant's shoulders or at least examining some of these  
5     transactions to make sure that we don't wind up with a whole  
6     new crop of victims, you have offered or, you know, made the  
7     suggestion that your firm be the monitor to make sure that  
8     this doesn't happen again.

9           And the monitor's role, when you say to the Court  
10    that I will be a monitor, implies that if you found evidence  
11    of some problem, that you would take steps to either advise  
12    the Government, inform the Court, put a stop to it, tell the  
13    victims, -- whatever that step might be. But you have,  
14    you've indicated to the Court you're not willing to take  
15    those steps because of the attorney/client privilege.

16           MR. BARKET: No, I'm --

17           THE COURT: But the monitoring -- let me finish. So  
18    the monitoring role means nothing. It means that you're the  
19    one with the information, but you don't pass it on to  
20    anybody.

21           MR. BARKET: Judge, what I was saying before is  
22    that we would only be aware of such a thing secondarily.  
23    Because the transactional lawyers --

24           THE COURT: I am not going to rely on lawyers not  
25    before me.

Colloquy

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1 MR. BARKET: But --

2 THE COURT: If transactional lawyers were to come  
3 into this courtroom and say Judge we'll be prepared to take  
4 that role, fine. But you're offering to take the role.

5 MR. BARKET: But --

6 THE COURT: I'm not going down that path so don't  
7 even, you can make the argument.

8 MR. BARKET: I'm not making an argument Judge. All  
9 I'm doing is asking, let me complete my thought.

10 THE COURT: I'm not going to presume that lawyers  
11 who are not in front of me, -- transactional lawyers, are  
12 going to be looking with an eye towards whether or not  
13 there's a problem, a fraudulent problem with the -

14 MR. BARKET: Could we have a brief recess Judge?

15 THE COURT: Yes.

16 (Recording paused at 12:08:00)

17 (Recording resumes at 12:24:53)

18 THE COURT: All right, we've had a brief recess.  
19 Does anyone want to add anything?

20 MR. CAFFARONE: Nothing from the Government Your  
21 Honor.

22 MR. BARKET: Mr. Barkany is actually insisting that  
23 I go forward with what he proposed. So I'm his attorney and  
24 I will do as he's instructed. Which is, that if our firm  
25 becomes aware of fraud, he has authorized and in fact



Colloquy

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1 directed that we disclose it to the U.S. Attorney's Office.  
2 And that would be a condition of the package I suppose.

3 THE COURT: All right. Mr. Caffarone.

4 MR. CAFFARONE: Well, I have nothing to add if he's  
5 -- I don't have any objection to that.

6 THE COURT: All right, so the package would be that  
7 the million dollar bond would continue, correct?

8 MR. CAFFARONE: Correct.

9 THE COURT: That the travel would be eastern and  
10 southern districts as well as New Jersey. Now, let me just  
11 ask something. How many times have you appeared before  
12 Judge, before other judges to seek a modification of the  
13 bail?

14 MR. CAFFARONE: We haven't. The only requests have  
15 been in letters where Mr. Barkany has asked to go to his  
16 office or other, or recently when his wife had a child. But  
17 we haven't actually had court appearances.

18 The only time we've had Court was for the initial  
19 appearance. And then there was a waiver that was before  
20 Judge Wall. And then there was a bail package presented to  
21 Magistrate Judge Tomlinson. So there were, I think we've  
22 been before the Court three times.

23 THE COURT: All right, now where specifically in New  
24 Jersey does the family reside?

25 MR. BARKET: Just north of exit 90.

Colloquy

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1 THE COURT: Do you know what district that might be?

2 MR. BARKET: There's one district in New Jersey.

3 THE COURT: There's only one?

4 MR. CAFFARONE: Right.

5 THE COURT: Has the defendant's passport been  
6 surrendered already?

7 MR. CAFFARONE: Yes, Your Honor.

8 MR. BARKET: Yes, Your Honor.

9 THE COURT: All right, I'm reviewing the conditions  
10 that were entered by the previous judicial officer who heard  
11 the application for bail. And that was Judge Tomlinson.

12 She imposed conditions that the defendant was to  
13 undergo a mental health evaluation by a certified mental  
14 health provider. Has that been done?

15 MR. BARKET: Yes, Your Honor.

16 THE COURT: And was the report issued to the Court  
17 within 30 days?

18 MR. BARKET: I believe so. We haven't seen it. But  
19 I believe it was issued. He did that almost immediately upon  
20 being released.

21 THE COURT: Mr. Caffarone?

22 MR. CAFFARONE: (inaudible 12:29:24)

23 THE COURT: I did not see anything in the file.  
24 Yes, you are whom?

25 OFFICER BORKE: Officer Borke (phonetic) from

Colloquy

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1 pretrial services.

2 THE COURT: Okay.

3 OFFICER BORKE: Mr. Barkany did participate in a  
4 mental health evaluation with First Light Psychological.

5 THE COURT: Okay.

6 OFFICER BORKE: I'm just reviewing it here. And I  
7 do know that it was submitted to Judge Tomlinson's chambers.

8 THE COURT: All right.

9 OFFICER BORKE: And that was back --

10 THE COURT: And so a report was issued?

11 OFFICER BORKE: It was.

12 THE COURT: Okay.

13 OFFICER BORKE: That was back in April.

14 THE COURT: And let me just ask, the reporting  
15 requirement as directed by pretrial services, what was the  
16 arrangement with respect to reporting?

17 OFFICER BORKE: (inaudible - not on microphone)

18 THE COURT: Once a month?

19 OFFICER BORKE: (inaudible)

20 THE COURT: So that reporting requirement is to  
21 continue. And so once a month at pretrial services. And you  
22 will be visiting the defendant at his home once a month.

23 OFFICER BORKE: Yes, it's (inaudible)

24 THE COURT: I'm sorry, can you get near the  
25 microphone? I'm having trouble hearing you.

Colloquy

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1           OFFICER BORKE: Sure. If you would like to add  
2 that pretrial is permitted to visit him at his place of  
3 employment. We would do that as well if you wish.

4           THE COURT: Yes, I'm going to add that.

5           OFFICER BORKE: Okay.

6           THE COURT: Do we have a place of employment?

7           OFFICER BORKE: That I do not, I'm not aware of.

8           THE COURT: Is there a placement of employment Mr.  
9 Barket?

10          MR. BARKET: We actually closed his office shortly  
11 after his arrest and we'll reopen another one. So we'll give  
12 that to them once we're able to do it.

13          THE COURT: All right.

14          MR. BARKET: He hasn't obviously been able to set  
15 that up because of the conditions thus far.

16          THE COURT: All right. So if he sets up an office  
17 of employment, he is to report that to pretrial services.  
18 And they may randomly visit that office.

19          In addition it seems as though Judge Tomlinson  
20 posed the requirement of financial disclosure of bank  
21 accounts and financial assets.

22          MR. BARKET: Not all. The ones, any bank accounts  
23 or assets outside the country and there are none.

24          THE COURT: Right. Has that been done?

25          MR. BARKET: Well there are none, so yes.

Colloquy

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1 THE COURT: And I think that's it. Was there  
2 anything else that pretrial services is aware of?

3 OFFICER BORKE: Not that I'm aware of.

4 THE COURT: Okay.

5 MR. CAFFARONE: Your Honor there were properties  
6 posted that should remain on the bond as well.

7 THE COURT: Right. I want to speak to the sureators  
8 who are signators to the surety bond, assuming they're the  
9 same individuals. Are they the same people?

10 MR. BARKET: Yes, yes, Your Honor.

11 THE COURT: And they posted the, as surety, the  
12 premises located at 17 Locust Hollow Drive in Muncie, is that  
13 right?

14 MR. BARKET: Yes.

15 THE COURT: And is this property under some kind of  
16 a trust?

17 MR. BARKET: Yes.

18 THE COURT: So how can it be pledged as property?

19 MR. BARKET: The trustee is the, Mr. Sklar  
20 (phonetic) came in and represented to the Court that he had  
21 the authority and the ability to place it as security for a  
22 bond. And we have the four beneficiaries of the trust all  
23 sign off on it.

24 THE COURT: All right. So that was done and are  
25 they all here?

Colloquy

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1 MR. BARKET: Well the trustee submitted an  
2 affidavit. One of the beneficiaries is in Baltimore. We did  
3 that by affidavit the first time. We have another one today.

4 And then there are, the other trustees are here.  
5 Excuse me, the other beneficiaries of the trust are here as  
6 well as his mother-in-law and father-in-law who also signed  
7 off on the bond.

8 THE COURT: And the trustee is present or not  
9 present?

10 MR. BARKET: He is not present.

11 THE COURT: All right. So you have prior  
12 representation from the trustee that he had the authority to  
13 pledge the property.

14 MR. BARKET: Correct.

15 THE COURT: You have the beneficiaries of the trust  
16 either present or by affidavit?

17 MR. BARKET: Correct.

18 THE COURT: And where is that affidavit?

19 MR. BARKET: That should be with the Court. I have  
20 two here.

21 THE COURT: Is this a newly signed affidavit?

22 MR. BARKET: There are two new ones. There are two  
23 new ones, -- one from Juda Zellinger (phonetic) who is one of  
24 the beneficiaries of the trust who resides in Baltimore. And  
25 the trustee, Daniel Sklar. Sklar.

Colloquy

23

1 THE COURT: Let me see what you have. No, these are  
2 the old ones. I don't want the old ones.

3 MR. BARKET: I'm sorry Judge. The one from Mr.  
4 Sklar is an original that we have.

5 (pause in proceedings)

6 THE COURT: And who are the other signators on the  
7 bond? There's a Delma Rosen, Rosenni (phonetic)? I can't  
8 read the handwriting. Somebody who lives at 14 Sands Point.

9 MR. BARKET: They don't live in Sands Point. Sands  
10 Point Road in Muncie. They're all here Your Honor.

11 THE COURT: All right. Come on up and identify  
12 yourselves please. Why don't you stand by the podium. Any  
13 beneficiary that's got an interest in the Zellinger trust or  
14 the premises located at 17 Locust Holland Drive in Muncie.  
15 All right, could you just give me your names please.

16 MS. ROSENBERG: Deborah Rosenberg.

17 THE COURT: All right.

18 MR. ROSENBERG: Joseph Rosenberg.

19 THE COURT: And what is your connection to the  
20 trust?

21 MR. ROSENBERG: She is beneficiary, I am just a  
22 (inaudible) I have no connection to the bond.

23 THE COURT: All right.

24 MS. DANZIGER: Deena Danziger (phonetic) beneficiary  
25 to the trust.

Colloquy

24

1 THE COURT: All right.

2 MR. ZELLINGER: Jonathan Zellinger, beneficiary of  
3 the trust.

4 THE COURT: Now did, I have two signatures on this  
5 bond, the original bond. Is that one of you? Did one or two  
6 of you sign the original bond?

7 UNIDENTIFIED SPEAKER: We all signed it.

8 THE COURT: I only have two signatures here.

9 UNIDENTIFIED SPEAKER: There should be a second  
10 page attached.

11 UNIDENTIFIED SPEAKER: (inaudible) beneficiaries  
12 and the trustee signed for purposes of (inaudible).

13 THE COURT: And are they here?

14 UNIDENTIFIED SPEAKER: Yeah, they're here.--

15 THE COURT: Wait a minute. I have, Danni Keer  
16 (phonetic).

17 UNIDENTIFIED SPEAKER: Yes.

18 THE COURT: Oh, that's Danziger. Okay, I'm trying  
19 to read it off of the signature, that's why it's hard. Mr.  
20 Zellinger who's identified himself. Mr. Sklar for whom there  
21 is -- and is there a Delmar --

22 UNIDENTIFIED SPEAKER: Deborah Rosenberg?

23 THE COURT: Oh, that could be it. Deborah  
24 Rosenberg, maybe that's it. And then one more signature that  
25 to me is illegible. Who would that be?



## Colloquy

25

1 UNIDENTIFIED SPEAKER: That is the one from  
2 Baltimore that you have the affidavit from.

3 THE COURT: No --

4 UNIDENTIFIED SPEAKER: Joseph Rosenberg.

5 THE COURT: That could be. And is he here? Oh, is  
6 that you? Well let me see if that's your signature. Show  
7 him this. That's the other person. Okay, so we have  
8 everybody represented.

9 All right. There's been a large discussion here  
10 which you've been present for about the bail package. And  
11 it's of vital interest to you folks to know what the terms of  
12 the proposed release is and how they're being modified.

13 As you probably are all aware now, the defendant, I  
14 mean he was about to plead guilty to this. So and in  
15 addition there's been a finding of probable cause to believe  
16 that he is engaged in a fraud of investors to the tune of  
17 some \$60 million.

18 So those are the charges. They're not proven yet.  
19 The defendant has the right to go to trial on this. Although  
20 he did indicate yesterday that he might plead guilty. He  
21 hasn't done that yet. So he is presumed to be innocent as of  
22 the moment.

23 But I bring that information to your attention so  
24 that you're aware of some of the concerns that the Court had  
25 with respect to releasing the defendant.

1           He is and the Government has joined in an  
2 application and I'm going to order this, -- he's going to be  
3 released on bail. Now the bail conditions which I intend to  
4 set are going to set travel restrictions. They are going to  
5 be the eastern district of New York, the southern district of  
6 New York and New Jersey. Which means that he cannot travel  
7 outside of those areas.

8           Let me tell you what they are. The eastern  
9 district means Brooklyn, Long Island, Staten Island, Queens.  
10 The southern district is Manhattan, Westchester, White Plains  
11 and pretty much that's it. And the area of New Jersey which  
12 is where his other family, his family resides.

13           MR. BARKET: I'm sorry to interrupt Judge. They all  
14 live in Rockland County which I'm fairly certain is part of  
15 the southern district.

16           THE COURT: I believe you may be right. But I don't  
17 know how much, if all of Rockland County is.

18           MR. BARKET: I believe its Dutchess, Orange,  
19 Rockland and Westchester as well as Manhattan and the Bronx.

20           THE COURT: It gets a little fuzzy when you move  
21 upstate as to what's included. I agree with counsel that  
22 portions if not all of Rockland County is included.

23           But what's important for you to know is that that's  
24 it. He can't go to Connecticut. He can't go to Vermont. He  
25 can't travel any place else, but the areas that are

1 designated for his specific travel.

2 If he's outside of the areas that are designated  
3 for his specific travel, he's in violation of his bail which  
4 is a problem for you folks.

5 And the reason I'm telling you this is because if  
6 the defendant violates any of the conditions of bail, then  
7 you're in peril in terms of the assets that you've pledged.

8 The Government has asked and I'm going to, frankly  
9 I think I'm going to raise the amount of the bond to \$2  
10 million. Because it was a million while he was under house  
11 arrest. I'm now going to raise the sum to \$2 million because  
12 he's going to be released for the better part of the day,  
13 from 6:00 a.m. till 10:00 p.m., not 12:00 as suggested. If  
14 he's doing business, it's more than adequate time within  
15 which to engage in business affairs.

16 Now, one of the major concerns the Court had was  
17 allowing this bail package to go forward, was what kind of  
18 business this defendant would be engaged in as he's released  
19 and during his release.

20 If he engages in any kind of elicited, fraudulent,  
21 unlawful activity during the course of his release, that  
22 would be a serious and material violation of his bail  
23 conditions. I've now arranged it to impose on his own  
24 attorney the obligation to report those transactions and any  
25 elicited transaction or unlawful, fraudulent or unethical

## Colloquy

28

1 transaction to the Government so that the Government is made  
2 immediately aware of the fact that that's going on. And you  
3 folks are going to be the losers.

4 The minute that transgression occurs, the  
5 Government will be authorized to move against your property,  
6 your assets. And when I say your property, your assets, when  
7 you sign a bond for \$2 million, it's not limited to just the  
8 property that's in the trust. Anything you own. Your  
9 personal homes, your bank accounts, your cars, everything is  
10 in play.

11 And the Government can seize whatever property is  
12 available from any one of you or all of you or one of you,  
13 whoever's got the most. Whatever is the easiest to the tune  
14 of \$2 million.

15 So I tell you that because you have to have a lot  
16 of confidence in the defendant when you sign a bond for \$2  
17 million. Because you're putting your personal finances at  
18 risk.

19 I'm also requiring as part of this package that he  
20 be subjected to random visits by pretrial services at any  
21 place of employment that he establishes. As you've already  
22 heard, pretrial services is going to be paying a visit to his  
23 home once a month. He's going to be required to report to  
24 pretrial services once a month. If he doesn't do it, it's a  
25 violation of bail.

1           If he doesn't show up to Court, any single day  
2           that's set, he's in violation of bail. And it won't matter  
3           if he shows up the next day. So if he's given a date to  
4           appear in Court on the 12th and he doesn't show up until the  
5           13th, a warrant will be issued for his arrest. He will be in  
6           violation of bail and you folks will be at risk.

7           And if he's arrested on any federal or state  
8           charges while he's out on bond, you folks once again at risk.  
9           So all of those triggers exist here and you need to be fully  
10          aware of them before you sign off on a bond here. Do you  
11          understand? Does anyone have a question about this?

12          And the properties, and I'll get to your question  
13          in a moment. The property that is the trust property, the  
14          specific property at 17 Locust Holland Drive that's being put  
15          up, or Locust Hollow Drive, sorry, may not be compromised in  
16          any way. Meaning it can't, you can't empty out the asset.  
17          You can't compromise the value of the asset. You can't get  
18          money against that asset. That asset remains untouched until  
19          this case is over, which could be years. It could be years.

20          So those are the conditions. Did you, you had a  
21          question.

22          UNIDENTIFIED: The only question I had is can you  
23          confer with (inaudible).

24          THE COURT: Absolutely. And you should confer with  
25          whomever, your spouses, whatever. Because it is a big

Colloquy

30

1 undertaking. And I tell you this just to make sure that  
2 you're very clear. And you don't come back six months from  
3 now saying I didn't understand.

4 So if you have questions or concerns, discuss them  
5 with counsel or ask me because I'll be happy to clarify  
6 whatever you clarification on.

7 MR. CAFFARONE: Your Honor did you also add the no  
8 gambling?

9 THE COURT: Yes, there's no gambling.

10 MR. CAFFARONE: Okay, thank you.

11 THE COURT: And that's a very important condition  
12 here. Because as you may or may not be aware, there's an  
13 indication that the defendant has a gambling problem.

14 If he so much as steps foot in one of those  
15 gambling houses, he's in violation of bail and the  
16 Government's coming after you folks. You're the hook here.  
17 That's why you're being asked to sign. And you better have  
18 confidence in this gentleman before you sign otherwise you're  
19 putting your finances at risk. Go ahead.

20 (pause in proceedings)

21 (Court hears another matter)

22 (Recording resumed at 12:56:43)

23 THE COURT: All right, are we ready to continue on  
24 United States versus Barkany?

25 MR. CAFFARONE: Yes.

## Colloquy

31

1 THE COURT: All right. Let's have the, I'm going to  
2 have a new bond prepared and have the sureators -- are all  
3 the Sureators prepared to sign the bond? Does anybody have  
4 any additional questions?

5 All right, I'll let the record reflect they've all  
6 nodded their assent, okay. So bail formally is being set at  
7 \$2 million with the conditions of release as follows. Travel  
8 restrictions to the eastern and southern district of New York  
9 as well as New Jersey.

10 The defendant is, who is presently on house arrest,  
11 will be permitted to leave his residence from the hours of  
12 6:00 to 10:00 p.m., not 12:00 as proposed by the Government.  
13 10:00 p.m. is the cut off.

14 I'm permitting pretrial services to conduct random  
15 visits of the home and to continue with the current  
16 arrangement which is a visit once a month to his home as well  
17 as having the defendant appear at pretrial services once a  
18 month.

19 I'm permitting pretrial services to conduct random  
20 visits at the place of employment which the defendant is to  
21 disclose to the pretrial services once it's established. I  
22 understand he does not currently have an office, but plans to  
23 have one. That office should be disclosed to pretrial  
24 services.

25 To the extent that any bank accounts or financial

1 assets are established overseas, there is a continuing duty  
2 to disclose any accounts that might meet that definition.

3 While the defendant is on release, its reported to  
4 the Court that he intends to engage in business, business  
5 transactions I should say. The nature of which are going to  
6 be monitored by defense counsel's firm, Mr. Barket.

7 If it's reported by Mr. Barket that the defendant  
8 has agreed to a waiver of his attorney/client privilege to  
9 permit Mr. Barket to report to the Court or to the Government  
10 that is, not the Court, to the U.S. Attorney's Office any  
11 untoward, meaning illicit or illegal or transactions of a  
12 questionable nature which might constitute violations of law.

13 And that if there is any change, that is if at any  
14 point Mr. Barkany decides that he wants to change his waiver  
15 of attorney/client privilege, Mr. Barket is to report that to  
16 the Government and to the Court.

17 MR. BARKET: Your Honor, I'm sorry. You're saying a  
18 waiver of the attorney/privilege. It's a waiver of, he's  
19 waiving my, any ethical restraints that I might have in  
20 reporting a crime to the Government.

21 THE COURT: But presumably there's also some  
22 attorney/client privilege involved there as well.

23 MR. BARKET: Right, right, to the extent that it's  
24 necessary, that. But the broader attorney/client privilege  
25 will remain intact. I'm still representing him on a



1 pending

2 THE COURT: Yes, I understand.

3 MR. BARKET: Okay.

4 THE COURT: But it's limited to the subject matter  
5 we discussed which is his ongoing business transactions. And  
6 only to the extent that these business transactions are of,  
7 are subject matter or nature that raises questions as to  
8 their validity or their legality. And I want to make sure  
9 that it's clear that if there's a question as to the legality  
10 of a business transaction, that's what I expect Mr. Barket to  
11 report to the Government.

12 MR. BARKET: Yes, Your Honor.

13 THE COURT: And if for whatever reason the  
14 defendant withdraws his permission, you must advise us as  
15 well.

16 MR. BARKET: Yes.

17 THE COURT: Okay. In addition, the Court is advised  
18 that the defendant may have a gambling addiction. I'm  
19 continuing the order previously entered that he may not enter  
20 a gambling establishment or participate in gambling of any  
21 kind during the period of his release.

22 And the usual conditions of bail also apply. That  
23 is, that if he's arrested on any federal or state charges  
24 while he's out on bail, then bail will be revoked and a new  
25 evaluation will be held as to what is the appropriate bail

## Colloquy

34

1 condition for the defendant, if any.

2 And certainly if he fails to appear in Court on any  
3 date that's set, -- a warrant will be issued for his arrest  
4 and he will face additional charges of bail jumping, which  
5 are separate and independent from the ones he faces today.

6 Now, to review the sureator situation, I've been  
7 provided by Mr. Barket with affidavits signed by Juda  
8 Zellinger dated June 26th, 2013 as well as an affidavit  
9 signed by Daniel Sklar, the trustee, signed June 25th of 2013  
10 indicating that they are aware of the modifications, -- not  
11 the specific ones because they indicate they were advised  
12 that Mr. Barkany would be permitted to leave his home between  
13 6:00 and 12:00. It's actually 6:00 and 10:00. So I've  
14 modified that.

15 And I have, I have expanded the bail sum from a  
16 million to two million. So Mr. Barket, I would appreciate it  
17 if you would submit an additional affidavit from each of  
18 these individuals indicating that they're aware of the \$2  
19 million bond.

20 MR. BARKET: Right, correct. Mr. Sklar is not a --

21 THE COURT: Right, he's --

22 MR. BARKET: He's signing only as a trustee.

23 THE COURT: No need from Mr. Sklar, but I need it  
24 from Juda Zellinger.

25 MR. BARKET: Correct.

Colloquy

35

1 THE COURT: All right. So I need an updated  
2 affidavit from Mr., is it Mr. or Mrs.?

3 MR. BARKET: In Baltimore, Mr. Juda.

4 THE COURT: All right. And then we have the  
5 Sureators who have presented here in Court. They are, let me  
6 see, I wrote their names down; Joseph Rosenberg, Deborah  
7 Rosenberg, Deena Danziger and Jonathan Zellinger.

8 All of whom appear to be beneficiaries, except for  
9 Mr. Rosenberg, of the trust, the Zellinger trust. But all of  
10 whom have been advised of the risks that are involved with  
11 signing off on a \$2 million bond and are fully aware that  
12 their risk is not limited to the specific trust asset.

13 I understand they're willing to sign the bond. So  
14 we have to present the bond for their signature.

15 I also want to make clear that defendant may not  
16 apply for a passport during the pendency of this matter. I  
17 understand he surrendered his passport.

18 MR. CAFFARONE: Your Honor that applies to any  
19 country, passport, not just the United States. But applying  
20 for a passport --

21 THE COURT: Right. He has connections with Canada  
22 and Israel. So he may not obtain passports in those  
23 jurisdictions as well, those countries as well.

24 (pause in proceedings)

25 THE COURT: Mr. Barkany, I'm going to address you

## Colloquy

36

1 directly because I want to make sure you understand  
2 everything that you're required to do under the terms of your  
3 release.

4 It starts with the travel restrictions to the eastern and  
5 southern district of New York as well as the District of New  
6 Jersey.

7 Now I've already outlined the eastern district,  
8 Brooklyn, Queens, Long Island, Staten Island. The southern  
9 district being Manhattan, the Bronx, White Plains,  
10 Westchester, Rockland County. To the extent that all of  
11 Rockland County, again Mr. Barket will give you a clearer  
12 definition of what parts if not all of Rockland County is  
13 included. But southern district is your limitation. You  
14 may not travel outside of those areas without Court  
15 permission.

16 You may not go into a gambling establishment or  
17 engage in gambling during your release. You may not apply  
18 for a passport in any jurisdiction or country. You've  
19 surrendered the one you already have.

20 And if you haven't already surrendered any passport  
21 you may have in another country, you must do so immediately.  
22 You are placed under the supervision of pretrial services.  
23 They are permitted to random visits. In addition to which  
24 you currently have reporting requirement of once a month in  
25 person to pretrial services. That's to continue. They may,

## Colloquy

37

1 they will visit your home once a month as they've been doing  
2 in the past. And also are permitted random visits.

3 When it comes to the point where you establish a  
4 business, you are to report the location of that business to  
5 pretrial services. They will be permitted random visits to  
6 that location. And they will be permitted to access any  
7 financial information related to the operations of that  
8 business.

9 You may leave your home between the hours of 6:00  
10 and 10:00 p.m. only. You are to disclose any assets or bank  
11 accounts that you may possess that or establish overseas.  
12 You are to come to Court on any dates that are set. If you  
13 fail to show up in Court on any date that's set, a warrant  
14 will be issued for your arrest and you will be faced with a  
15 new charge of bail jumping which is a separate and  
16 independent charge from the one you currently face.

17 If you are arrested on any federal or state charges  
18 while you are out on bail, that will constitute a violation  
19 of your bail. And the conditions of your release will be  
20 reexamined at that time.

21 Your bail has been set at \$2 million, secured by  
22 the signatures of the various Sureators who have appeared  
23 here today as well as the premises at 15 Locust Hollow Drive,  
24 Muncie, New York.

25 I think that's -- and most importantly while you

Colloquy

38

1 are on release from 6:00 to 10:00 p.m. as we've discussed  
2 here in Court and made very clear, to the extent that you  
3 engage in business transactions, your attorney, with your  
4 permission, which has been represented to the Court you've  
5 given, if Mr. Barkat is, who is, who has pledged to monitor  
6 your activities of a business nature, if he becomes aware of  
7 any activities which are of a possible unlawful, fraudulent  
8 or unethical nature, you've given him permission to disclose  
9 that activity or the nature of that activity to the U.S.  
10 Attorney's Office. Do you understand the conditions of your  
11 release?

12 MR. BARKANY: Yes, Your Honor.

13 THE COURT: Do you have any questions about what  
14 you're required to do?

15 MR. BARKANY: No.

16 THE COURT: All right. All right, with respect to  
17 Mr. Barkany, is there any other application at this time?

18 MR. CAFFARONE: Not by the Government Your Honor.

19 MR. BARKAT: One moment Your Honor.

20 (pause in proceedings)

21 MR. BARKAT: Your Honor.

22 THE COURT: Yes.

23 MR. BARKAT: I think at this point we would like to  
24 proceed with a plea, if the Court has the time to do that.

25 THE COURT: We'll do it at 2:00 o'clock.

Barkany-Court

39

1 MR. CAFFARONE: The Government's available Your  
2 Honor.

3 MR. BARKET: I'll make myself available.

4 (Court hears other matters)

5 (Barkany proceeding resumes at 2:39:00)

6 COURT CLERK: Calling 13-CR-362, the United States  
7 of America against Gershon Barkany. Please state your  
8 appearances.

9 MR. CAFFARONE: Chris Caffarone for the United  
10 States. Good afternoon Your Honor.

11 THE COURT: Yes.

12 MR. BARKET: Good afternoon again Your Honor, Bruce  
13 Barket for Mr. Barkany.

14 THE COURT: All right. Mr. Barket, I understand  
15 your client wishes to go forward with his plea?

16 MR. BARKET: Yes, Your Honor.

17 THE COURT: So let's swear in the defendant.

18 COURT CLERK: Please rise. Raise your right hand.

19 DEFENDANT GERSHON BARKANY SWORN

20 EXAMINATION BY THE COURT:

21 Q All right, Mr. Barkany first of all, on the stand, that  
22 you have the right once again to ask Judge Wexler to take  
23 your plea, correct? You know that?

24 A Yes.

25 Q You have that right. Are you willing nonetheless to let

1 me take your plea?

2 A Yes.

3 Q And Judge Wexler being the Judge who would sentence you  
4 normally would take a plea, but you're willing to let me do  
5 it?

6 A Yes.

7 Q All right. You had completed a form which we reviewed  
8 yesterday. I just want to ask you just generally is there  
9 any changes that you wish to make to any of the answers you  
10 gave on that form?

11 A Yes.

12 Q There is?

13 A Yes.

14 Q And what would that change be?

15 A I was asked if I was promised anything in return for my  
16 plea and yesterday I answered yes. And today I switched my  
17 answer to no.

18 Q Well, I'm going to go through the whole allocution with  
19 you. We need to do that. But is there any of the written  
20 answers that you provided, did you need to change any of the  
21 written answers?

22 A No.

23 Q Do you want to look at this again?

24 A No. No, thank you.

25 Q All right. Well we're going to go over it anyway



Barkany-Court

41

1 orally, so. Just tell me how old you are.

2 A 29.

3 Q And how far did you get in school?

4 A High school.

5 Q Okay. Now are you presently under the care of any  
6 doctor or psychiatrist?

7 A No.

8 Q Yes?

9 A No.

10 Q Okay. What about medications, pills, alcohol, anything  
11 in the last 24 hours?

12 A No.

13 Q Are you on any medications or pills of any type  
14 regardless of the 24 hour time line?

15 A No.

16 Q So you're not taking anything?

17 A No.

18 Q Have you ever been hospitalized or treated for narcotics  
19 addiction?

20 A No.

21 Q Is your mind clear today?

22 A Yes.

23 Q And you understand why you're here?

24 A Yes.

25 THE COURT: Mr. Barket, have you discussed this

1 matter with your client?

2 MR. BARKET: Yes, Your Honor.

3 THE COURT: And does he understand the rights he'd  
4 be waiving by pleading guilty?

5 MR. BARKET: I believe he does.

6 THE COURT: And is he capable of understanding the  
7 nature of these proceedings?

8 MR. BARKET: I believe he is.

9 THE COURT: So in your opinion is he competent to  
10 plead at this time?

11 MR. BARKET: I believe yes.

12 THE COURT: All right.

13 BY THE COURT:

14 Q Mr. Barkany I want to advise you you still have the  
15 right to plead not guilty, do you understand that?

16 A Yes.

17 Q And if you pled not guilty under the constitution and  
18 laws of the United States, you'd be entitled to a speedy and  
19 public trial by jury, with the assistance of your attorney to  
20 defend you in that case, do you understand that?

21 A Yes.

22 Q And at a trial, you'd presumed to be innocent and it  
23 would be up to the Government to overcome that presumption  
24 and prove you guilty by competent evidence and beyond a  
25 reasonable doubt. And you would not have to prove that

1     you're innocent because you're presumed innocent. And if the  
2     Government failed in its proof, the jury would have a duty to  
3     find you not guilty. Do you understand that?

4     A     Yes.

5     Q     Now, what would happen at a trial is the Government  
6     would have to bring its witnesses to testify in your  
7     presence. Your attorney could object to the evidence that  
8     the Government offers. Your attorney would be entitled to  
9     cross examine the Government's witnesses. And your attorney  
10    could offer evidence on your behalf. Do you understand that?

11    A     Yes.

12    Q     Although because you're presumed innocent, you would  
13    have absolutely no obligation to present any evidence at all.  
14    Do you understand that?

15    A     Yes.

16    Q     If the Government, after offering its evidence failed in  
17    its burden to prove your guilt beyond a reasonable doubt, as  
18    you know, the jury would have a duty to find you not guilty.  
19    You understand that?

20    A     Yes.

21    Q     Now, at a trial you would have the right to testify if  
22    you wanted to do that. But you couldn't be required to  
23    testify because you have the right not to incriminate  
24    yourself. That's the constitutional right you possess. Do  
25    you understand that?

1 A Yes.

2 Q So if you decided not to testify the Court would  
3 instruct the jury that they could not hold that decision  
4 against you in their consideration of the verdict of the  
5 case. Do you understand that?

6 A Yeah, yes.

7 Q But if you plead guilty and the Court accepts this plea,  
8 you'd be giving up the constitutional rights to a trial, the  
9 presumption of innocence, the right not to incriminate  
10 yourself, these rights that we've discussed. There'd be no  
11 further trial of any kind. And no right to appeal or  
12 collaterally attack at any time the question of whether or  
13 not you're guilty. Do you understand that?

14 A Yes.

15 Q And the other aspect of this is as a consequence of an  
16 agreement that you have with the Government, which we're  
17 going to discuss in a moment, you've also given up your right  
18 to appeal the sentence of the Court to the extent that the  
19 sentence is 121 months or less, do you remember that?

20 A Yes.

21 Q So as a hypothetical, if Judge Wexler sentenced you to  
22 121 months in prison, you would have absolutely no right to  
23 appeal any component of this case, meaning your guilt or the  
24 sentence of the Court. Do you understand?

25 A Yes.

1 Q Do you also understand that if you plead guilty I'm  
2 going to be asking you questions about what you did in order  
3 to satisfy myself that you are in fact guilty of the crime  
4 that you wish to plead guilty to. And in answering those  
5 questions, you'd be giving up your right not to incriminate  
6 yourself. Do you understand that?

7 A Yes.

8 Q So are you willing to give up your right to a trial and  
9 these other rights that I've just discussed with you?

10 A Yes.

11 Q All right.

12 THE COURT: Now, the Government, I'm going to ask  
13 once again to outline the plea agreement for the record.

14 MR. CAFFARONE: Yes, Your Honor. The plea  
15 agreement, the defendant will get coverage from the  
16 Government. The Government agrees not to prosecute him for  
17 check kiting as well as the wire mail fraud that he committed  
18 between January 2007 and March 2013.

19 In addition in exchange as Your Honor noted, he has  
20 agreed to an appellate waiver of 121 months. The defendant  
21 also agreed to forfeit, to an entry of money judgment in the  
22 amount of \$62 million, less any monies or assets that are  
23 repaid to victims. So he agrees to forfeit \$62 million.

24 BY THE COURT:

25 Q All right. And Mr. Barkany I want to confirm you read

1 the plea agreement, correct?

2 A Yes.

3 Q And you reviewed it with your attorney before you signed  
4 it?

5 A Yes.

6 Q And you understood what the plea agreement provided?

7 A Yes.

8 Q Okay. As we reviewed yesterday, I want to go over the  
9 penalties that are associated with the charge you're pleading  
10 guilty to which is a charge of mail fraud or a violation of  
11 Title 18, United States Code Section 1343, which carries a  
12 maximum term of imprisonment of 20 years with a minimum term  
13 of imprisonment of zero. A maximum supervised release term  
14 of three years to follow any term of imprisonment. A maximum  
15 fine of \$250,000 or twice the gross gain or gross loss from  
16 the offense.

17 Restitution, which is in an amount to be determined by  
18 the Court. A \$100 mandatory special assessment as well as  
19 the criminal forfeiture which the Government has outlined.

20 Now, one of the things we discussed yesterday and I want  
21 to go over with you again is the sentencing guidelines. Your  
22 sentencing guidelines as calculated by the Government is an  
23 adjusted offense level of 30 which carries a range of  
24 imprisonment of 97 to 121 months. You're aware of that,  
25 correct?

1 A Yes.

2 Q Now, that's the Government's calculation. And as I've  
3 already explained and I will explain again, just to make sure  
4 you're clear, that is the Government's best guess. That's  
5 all it is. It's a guess.

6 And what will happen is you're going to go to probation  
7 and probation is going to do a full and comprehensive review  
8 of your background and the circumstances of this case. And  
9 they will do a calculation of the guideline range that  
10 applies in your case.

11 It may be the same as the Government's or even your  
12 attorney. I'm not sure what your attorney's told you. But  
13 if your attorney has told you that he agrees with the  
14 Government, it's important that you know that probation's  
15 going to do their own calculation. It may be similar to,  
16 different from. All of this information will go to Judge  
17 Wexler who will assess everything and make a final conclusion  
18 as to what your guideline range is.

19 If Judge Wexler decides that your guideline range is  
20 different from what's been estimated by your attorney and the  
21 Government, you do not have a basis to withdraw your plea.

22 In other words, don't rely on the Government's estimate  
23 or your own attorney's estimate because they're educated  
24 guesses at best. Do you understand that?

25 A Yes.

1 Q The one who's going to make a decision about this is  
2 Judge Wexler who will review all the information. And it  
3 will be up to Judge Wexler to decide what the sentence will  
4 be. He is not bound by the guidelines. He could, because he  
5 has the authority, decide that the guidelines should be pierced,  
6 meaning he should go upward beyond what the guidelines  
7 provide.

8 Or he could decide that they're too severe and he could  
9 sentence you downwardly, meaning less than what the  
10 guidelines provide. Do you understand all that?

11 A Yes.

12 Q At the end of the day nobody knows what your sentence is  
13 going to be. So that to the extent that you think you can  
14 rely on the estimate provided by the Government or your own,  
15 even your own attorney, I'm telling you that you can't  
16 because nobody is sure what your ultimate sentence will be  
17 and what the guidelines will provide. Do you understand  
18 that?

19 A Yes.

20 Q And if your sentence turns out to be more severe than  
21 any calculation you've been given or estimate you've been  
22 given, that will not provide a basis for withdrawing your  
23 plea of guilty. Do you understand?

24 A Yes.

25 Q Now one of the things that I've already told you is the



Barkany-Court

49

1 Government has to prove your guilt beyond a reasonable doubt.  
2 Here's what they have to prove. That between December 2007  
3 and March 2013, that you knowingly and intently devised a  
4 scheme and artifice to defraud investors by means of  
5 intentionally false and fraudulent pretenses. And that you  
6 transmitted or caused to be transmitted by wire transfer  
7 across state lines, matters that furthered the scheme to  
8 defraud. And that part of this activity was done in the  
9 Eastern District of New York. Do you understand that?

10 A Yes.

11 Q So do you understand the charge that you intend to plead  
12 guilty to?

13 A Yes.

14 Q All right. And have you discussed that charge with your  
15 attorney?

16 A Yes.

17 Q Do you have any questions about anything we've discussed  
18 up to this point?

19 A No.

20 Q Are you ready to enter a plea?

21 A Yes.

22 THE COURT: Mr. Barket, do you know of any legal  
23 reason why the defendant should not be permitted to plead  
24 guilty?

25 MR. BARKET: No.

1 Q Mr. Barkany, are you satisfied with your legal  
2 representation up to this point?

3 A Yes.

4 Q Then with respect to the information that was filed by  
5 the Government charging you with a violation of Title 18  
6 United States Code Section 1343, what is your plea?

7 A Guilty.

8 Q And are you entering this plea of guilty voluntarily and  
9 of your own free will?

10 A Yes.

11 Q Has anyone threatened or forced you to plead guilty?

12 A No.

13 Q Other than the agreement with the Government which we've  
14 described on the record both today and yesterday, has anyone  
15 made any promises to cause you to plead guilty?

16 A No.

17 Q Has anyone made any promise to you as to what your  
18 sentence will be?

19 A No.

20 Q So did you as charged in the information. On or about  
21 and between December 2009 and March 2013, those being  
22 approximate dates, did you knowingly and intentionally within  
23 the Eastern District of New York devise a scheme and artifice  
24 to defraud investors and to obtain money and property by  
25 means of false and fraudulent pretenses. And did you use the

1 wire transfers via the Federal Reserve network to execute  
2 that scheme to defraud?

3 A Yes.

4 Q Those wire transfers being in the amount of  
5 approximately \$13 million on June 14th, 2010 and another wire  
6 transfer in the amount of \$500,000 on or about February 15th,  
7 2013? Were those wire transfers transfers that you made or  
8 caused to be made in connection with the scheme to defraud?

9 A Your Honor, I don't recall specific dates or amounts.  
10 But I did in fact on at least one occasion engage in a scheme  
11 to defraud at least one person out of money in the Eastern  
12 District by telling them something that wasn't true and  
13 having them send money over the Federal interstate wire  
14 system and across through different states.

15 Q But was it within the time frame that we described?

16 A Yes, Your Honor.

17 Q All right. So I want you to expand and tell me in your  
18 own words what it is you did. How you effected this scheme.

19 A I told at least one person that I was going to invest  
20 their money, but did not use the money as I represented to  
21 that person that I would. Instead I diverted those funds in  
22 other directions.

23 Q Well, what did you tell that person? How were you going  
24 to use that money?

25 A In one instance I may have represented --

1 Q You may have or you did?

2 A I'm sorry. One instance I would have represented to  
3 that investor that I was going to utilize specifically his  
4 funds to invest in project X, you know, and describe a  
5 transaction to him. And instead of doing so, I would either  
6 have, I would have not used it for that and used it for other  
7 things.

8 Q All right. Who was this, what was the name of that  
9 investor?

10 A John Doe 1 as known to the Government let's say.

11 Q Well did you know who the investor was?

12 A Absolutely, sure.

13 Q Well who was the investor?

14 A Can I ask my attorney a question?

15 Q Sure.

16 (Court and counsel confer)

17 MR. BARKET: Your Honor I think that they were put  
18 in as John Doe number 1 and number 2. They don't want their  
19 names identified in a public filing. The Government knows  
20 them. We know them. But we'd rather --

21 THE COURT: Well let me hear from the Government.  
22 Mr. Caffarone is there any reason at this point for them to  
23 remain undisclosed?

24 MR. CAFFARONE: Your Honor the victims are sensitive  
25 to their name being disclosed. Generally, I mean, they have

1 asked us not to include their name in Court filings and  
2 we've, we've talked to the victims. And oftentimes we have  
3 to talk sometimes to their counsel as well.

4 I think it has to do with the community that  
5 they're in. They're very sensitive to their name being  
6 involved in being defrauded. I don't think its, obviously  
7 the U.S. Attorney knows who the victim is. We've been in  
8 contact with the victim. The defendant knows who the victim  
9 is.

10 For purposes of the allocution, I don't think it's  
11 a necessary element to it. And if we can protect the  
12 victim's privacy, then I would ask Your Honor to at least to  
13 agree to that.

14 THE COURT: Well, I'd be happy to.

15 BY THE COURT:

16 Q Well then with respect to John Doe 1, tell me what you  
17 did. I need some specifics.

18 A On at least one occasion I presented him with a set of  
19 information with regards to a deal, telling him that he  
20 should invest his money in it.

21 Q What kind of a deal was it?

22 A A real estate transaction.

23 Q All right. So he gave you thinking or the John Doe gave  
24 you money thinking he was investing in real estate, correct?

25 A John Doe 1 gave me money thinking that that money was

Barkany-Court

54

1 going specifically to the real estate deal that I represented  
2 to him.

3 Q All right. And where did these conversations or where  
4 was this real estate located?

5 A On one occasion the real estate was located in  
6 Manhattan.

7 Q All right. And where did you engage in these  
8 transactions or discussions?

9 A I was in the Eastern District of New York at the time  
10 that I conversed with the, with John Doe 1 about that.

11 Q All right. And how much money were you entrusted by  
12 John Doe to invest in that real estate deal?

13 A 14.5 million.

14 Q All right. And then what did you do with the 14.5  
15 million?

16 A I used it for, I diverted it in other directions than  
17 where I represented specifically to John Doe 1 that I was  
18 going to be using it for.

19 Q All right. So at no point did you use the money, the  
20 14.5 million, in accordance with what you were telling John  
21 Doe, correct?

22 A Not all of it.

23 Q What does that mean?

24 MR. BARKET: The actual transactions Judge are not  
25 simple. They were, what happened to the money after he

1 received it, it got diverted to a variety of different  
2 places.

3 THE COURT: I understood that.

4 Q But the simple question I've asked is did you use any  
5 portion of the 14.5 towards acquiring the real estate you  
6 said you were going to get for John Doe 1?

7 A No.

8 Q All right. And so did you mislead, John Doe, whoever  
9 John Doe is, one, did you intentionally deceive him, that  
10 party? It might not have been a him, a he, she? Did you  
11 take the money with the intent to defraud him?

12 (Client and counsel confer)

13 MR. BARKET: I'm sorry Judge, could you repeat the  
14 question?

15 Q Did you take the money, the 14.5 million from John Doe 1  
16 with the intent to defraud him?

17 A As defined under the current federal statutes, yes.

18 Q Well, I'm not sure that your definition of the current  
19 statute is the same as the Court's. So please tell me when  
20 you took the money from Mr. John Doe, you told him you were  
21 going to put it into a real estate deal, correct?

22 A Yes.

23 Q When you took the money, did you ever intend to put it  
24 into that real estate deal?

25 A On at least one occasion Your Honor I acted with

1 intention to defraud John Doe 1, yes.

2 Q Well, so not, on one occasion with respect to the 14.5  
3 million?

4 MR. BARKET: Your Honor, I'm sorry, the transactions  
5 were multiple. They are complex. All of the money didn't  
6 all, wasn't all diverted in a way that would have been  
7 illegal.

8 His intent --

9 THE COURT: Well that's what I'm trying to find out.

10 MR. BARKET: But it's, with all, I don't think it,  
11 it is, I think sufficient for the purposes of the plea  
12 allocution --

13 THE COURT: Please don't tell me what's sufficient.

14 MR. BARKET: I'm not telling you what you should  
15 accept. I'm saying what I think. And in this particular  
16 instance, you're asking him general questions about all of  
17 the money and the answers, the question doesn't allow for a  
18 simple yes or no answer to all of that.

19 THE COURT: Then Mr., you explain it to me in more  
20 specific terms that you're comfortable with. But to say that  
21 I took money from John Doe X and used it for something is  
22 insufficient. So go ahead and tell me in your own words what  
23 you did or how this fraudulent transaction occurred.

24 MR. BARKET: He took --

25 THE COURT: Not you Mr. Barket, your client. He's



1 pleading guilty.

2 MR. BARKET: He has --

3 THE COURT: I wanted to know what he did.

4 MR. BARKET: Judge and he's explained to you what  
5 he's done. You're asking --

6 THE COURT: In such generic and general terms that I  
7 don't understand it. So I want more specifics.

8 MR. BARKET: We can give you more specifics if you  
9 give us a moment. But he can't --

10 THE COURT: I'd be happy to.

11 MR. BARKET: He can't respond to your questions the  
12 way they're being asked in a way --

13 THE COURT: Then you --

14 MR. BARKET: Within the context of this plea because  
15 frankly to work out all of these transactions took many  
16 hours, many days to figure out where all the money went.

17 THE COURT: Fine. Then have him explain it in his  
18 words. And if I need some, more information, I'll ask.

19 (Client and counsel confer)

20 BY THE COURT:

21 A Your Honor.

22 Q Yes.

23 A Can I say over again, give an example of a scenario with  
24 John Doe 1?

25 Q Yes, go ahead. I'd like to hear what you're going to

1 tell me.

2 A On one occasion I went to John Done 1. I presented him  
3 with a real estate transaction in Manhattan. At the time I,  
4 at some point in time during my conversations with him about  
5 this particular transaction, I was in the Eastern District of  
6 New York. I asked him for \$7 million to do a real estate  
7 transaction, to invest in a real estate transaction. I  
8 specifically gave him the address, the location, et cetera,  
9 of that specific real estate deal.

10 My intention while asking him for the money to invest in  
11 that specific real estate deal was so that I would use that  
12 money elsewhere and not for that real estate deal.

13 As such, it was my intention to defraud him while  
14 ultimately of course, I wanted to pay him back. But I'm  
15 saying, I used the money for something different than what I  
16 represented to him.

17 Q Okay. It's charged in the information as I read it that  
18 you told investors that you would use their investment  
19 capital to purchase properties in New York and New Jersey  
20 that you would subsequently sell for a profit. Did you say  
21 that to both John Doe and John Doe 1 and 2, is that correct?

22 A Yes.

23 Q And did you claim that the sellers of those properties  
24 would only close on the real estate sales contracts after you  
25 had located a purchaser who'd be willing to buy the property

1 at a higher price?

2 A No.

3 Q I'm reading right from the information.

4 A Your Honor the substance of the charge is, I'm just  
5 answering the questions truthfully. I am guilty of committing  
6 18, 1343, you know. It's just, it's not exactly how the  
7 transaction itself works. It was a mistake just to how it  
8 was exactly written, but it doesn't speak to the substance of  
9 the charge. The deals in fact existed. The bottom line is  
10 though that I made certain representations to investors that  
11 were false.

12 Q All right.

13 THE COURT: Mr. Caffarone what is your evidence  
14 here? Because I'm having a very difficult time eliciting an  
15 allocution from the defendant that's satisfactory.

16 MR. CAFFARONE: Yes, Your Honor. The evidence is  
17 that the defendant as stated in the information on a number  
18 of occasions, represented to John Doe 1 and John Doe 2 that  
19 he was going to take their money and use it for particular  
20 real estate investments. Not just real estate generally,  
21 particular addresses. Told them I'm using your money and I'm  
22 going to purchase this property. And then didn't use it for  
23 that purpose. He sent it to other victims to pay, you know,  
24 victims from a prior Ponzi scheme or other investors. He  
25 used it to gamble. He used it for, to donate to charity.

Barkany-Court

60

1           In addition Your Honor, in the course of the fraud,  
2 John Doe 2 specifically, he provided them with documents, a  
3 purchase agreement that purported to be a purchase agreement  
4 between the seller of a property that he said he was  
5 purchasing and the victims.

6           That agreement, we've spoken to the seller of the  
7 property who said we didn't enter that agreement. That's not  
8 our signature. Mr. Barkany had contacted us months earlier  
9 about the property, but we haven't engaged in any  
10 negotiations. We certainly haven't agreed orally or  
11 otherwise to sell him this property.

12           In addition in that fraud, the John Doe number 2,  
13 he created an escrow agreement that was supposed to be a  
14 third party agreement with the escrow agent that was going to  
15 hold the monies until they had closed on the property. So  
16 the third party escrow agent was to insure that the funds  
17 only went to their intended purpose which was the purchase of  
18 the property.

19           We've contacted that third party escrow agent.  
20 They have said they didn't enter into that agreement. That  
21 that agreement was not their signature. And the monies went  
22 into an account that was controlled by the defendant. The  
23 defendant had created a bank account I think it was with TD  
24 Bank and put it in the name of the third party escrow agent.  
25 That wasn't the third party escrow agent's account, it was

Barkany-Court

61

1 the defendant's.

2 I believe during the course of a search warrant, we  
3 found some of these fraudulent documents as well in the  
4 defendant's office. In addition to all of that evidence, the  
5 defendant back in December --

6 THE COURT: Well hold on. How many, how many of  
7 these real estate deals did you find?

8 MR. CAFFARONE: We found, we talked to at least two  
9 of the owners where the owner said this deal was not, we  
10 never made a deal to sell this property to Mr. Barkany or any  
11 of the victims.

12 THE COURT: Okay. And how many deals were pitched  
13 to both John Doe 1 and 2?

14 THE DEFENDANT: There were a number of deals that  
15 were pitched; three to John Doe 1 and yeah, John Doe 2 had  
16 other deals unrelated to the monies that we charged in the  
17 information.

18 So there were some legitimate deals within, that  
19 Mr. Barkany had actually done with some of these, some of  
20 these victims. And there are some that we're just not clear,  
21 we hadn't spoken to the purchaser but that are not contained  
22 within the --

23 THE COURT: But there were multiple deals with John  
24 Doe 1 and John Doe 2 for real estate.

25 MR. CAFFARONE: Yes, correct.

Barkany-Court

62

1 THE COURT: Which were just bogus deals, correct?

2 MR. CAFFARONE: Completely shams, yes.

3 THE COURT: All right.

4 MR. CAFFARONE: And Your Honor I was, in addition to  
5 that evidence that I laid out, August 2011 the defendant  
6 signed an affidavit that was notarized where he admits to  
7 defrauding John Doe 1 and the other victims that were part,  
8 that also gave him money as part of the, what I call the  
9 first set of victims.

10 We didn't include all of them in the information. We only  
11 included John Doe 1.

12 In addition to the 46 and a half million dollars,  
13 he got another \$8 million from other victims. And in an  
14 affidavit he admits to repeatedly engaging, and I'm quoting,  
15 in fraudulent and unauthorized practices and conveyances  
16 which victimized the creditors.

17 He employed a variety of means in this fraud  
18 including the solicitations of funds for real estate and loan  
19 transactions which unbeknownst to plaintiffs were not as  
20 represented or all together non-existent.

21 You know, we had laid all this out in the  
22 complaints. So that would be our evidence. I'm sure we have  
23 other evidence as well. We recovered a number of records  
24 from his or from his office that we haven't even had a chance  
25 to go through. But at a minimum that's what we would proven

Barkany-Court

63

1 had this case gone to trial or if this case goes to trial.

2 BY THE COURT:

3 Q So Mr. Barkany did you hear the Government's outline  
4 here?

5 A Yes.

6 Q I'm having a difficult time understanding why you're not  
7 able to allocute in this case. Did you --

8 THE COURT: No, Mr. Barket I'm not addressing you.  
9 I'm addressing your client because it's him who is pleading  
10 guilty. And it's necessary that he outline the fraud that  
11 was engaged in.

12 MR. BARKET: He --

13 THE COURT: And the scope of the fraud.

14 MR. BARKET: He has Your Honor.

15 THE COURT: He has not to the Court's satisfaction.  
16 So if we're done, we're done. Are we done?

17 MR. BARKET: You can ask more questions if you like  
18 Judge. He's happy to answer them truthfully as he has so  
19 far.

20 BY THE COURT:

21 Q I want the defendant and I'm going to give you your last  
22 chance because after this I'm not going to try it again. I'm  
23 not, I don't want to be pulling teeth. If you're not willing  
24 to plead guilty to the contures of the offense, so be it.

25 You're either to describe what you did or I'm leaving.

Barkany-Court

64

1 So what did you do? I don't want, you know, it's not enough  
2 to say well I, whatever you said thus far is insufficient.

3 This is a fairly large scheme to defraud. You haven't  
4 really allocuted to a fairly large scheme to defraud. So,  
5 please, if you want to say something to the Court, you should  
6 do it right now.

7 (Client and counsel confer)

8 A Okay. Your Honor may I?

9 Q Yes, go ahead.

10 A Much of what the United States, what Mr. Caffarone said  
11 in open court just now is accurate and is what happened  
12 unfortunately. I, like he also mentioned, there's been, you  
13 know, a tremendous amount of deals that went on between my  
14 investors and myself, -- some of which were completely  
15 legitimate. And unfortunately many of them as well that were  
16 vehicles under which I used to separate money from my  
17 investors. And --

18 Q When you say separate money, -- do you mean steal money?  
19 Because that's what I want to hear, if that's what --

20 A Yes, I'm actually -- I was just quoting from that thing.  
21 From that paper that he read from.

22 Q Okay, well don't use euphoniums. Separate from my  
23 investors is not the same as admitting that stole money from  
24 them.

25 A Your Honor the truth is I'm not an attorney. But what I



1 am here to do today and with, very difficult to do it because  
2 of, you know, I've been doing this for quite a few years.

3 I am guilty of violating this, this thing that I'm  
4 charged with.

5 Q You see it is, what you're not understanding is that I  
6 have to be satisfied that you are guilty, not you. And so I  
7 ask you to tell me, and this is why we do, to tell me the  
8 facts. Tell me the actions that you did so that I can make a  
9 finding that you were in fact guilty of the crime you're  
10 wishing to plead guilty to.

11 Because ultimately it becomes somewhat of a legal  
12 assessment. And it's the Court's responsibility to insure  
13 that you're pleading guilty to a crime you actually  
14 committed.

15 A Okay.

16 Q That's why we insist on some detail. And so for you to  
17 say I'm guilty is inadequate. Or that I separated you know  
18 money from my investors is inadequate. Because what's  
19 lacking in that is that it's intentional. That it's done  
20 knowingly. That it was done with the intent to defraud, to  
21 steal from your investors. That you never intended to take  
22 the money and put it into the investments you represented you  
23 were going to do for them. And you knew that when you took  
24 the money. Those are the elements that have to be  
25 established.

Barkany-Court

66

1 And not just for one transaction. You've got a \$60  
2 million plus allegation here. Now, I don't need you to  
3 detail all \$63 million worth of the transactions. But  
4 certainly you should have enough information at your disposal  
5 that you're able to say that large swaths of money were taken  
6 from these investors. And at the moment you took their  
7 money, you either lied to them or you knew you weren't going  
8 to use it for the purposes that you represented. Or that you  
9 gave them false documents to con them into giving you the  
10 money and entrusting you.

11 Those are the elements that have to be allocuted to in  
12 order for me to accept this plea. So all of That has to be  
13 folded into this. Now if you want time to reconsider this,  
14 fine. I'm going to call a recess now and let you think about  
15 this so that you can pull it together.

16 MR. BARKET: Judge, there's no thought about whether  
17 or not he wants to plead guilty. He wants to. The problem  
18 arises that you're asking, you asked him specific questions  
19 that called for answers --

20 THE COURT: I'm done. I'm done.

21 THE DEFENDANT: Your Honor just to answer your  
22 question, I do want to speak to my attorney first.

23 THE COURT: If you want ten minutes to get an  
24 allocution together, that's fine. But I have, I gave you the  
25 -- I asked questions and then you said okay, well then just.

Barkany-Court

67

1 And then I invited you to come and explain it to me. I'm  
2 doing it both ways. I have never taken so much time with a  
3 plea.

4 And never have I been with a defendant who was so  
5 unwilling to allocute, okay, to describe the fraud. You've  
6 got a \$63 million fraud you're charged with and I can't get  
7 any elements out of you.

8 So I'm not sure if it's because you don't want to  
9 admit to what you did. If that's the case, then you  
10 shouldn't be pleading guilty.

11 Okay, so take ten minutes. Talk to your lawyer.  
12 Talk to the Government. You know what I'm looking for. If  
13 you're not able to provide it because it's not true, then  
14 don't say it. If you're not willing to say it because you  
15 just prefer not to, then we will void this plea again.

16 But you got to think about what you want to tell  
17 the Court. All right, we'll see you at 3:30.

18 (Recording paused at 3:18:46)

19 (Recording resumed at 3:27:43)

20 THE COURT: All right, we're back on the record.

21 BY THE COURT:

22 Q Mr. Barkany do you have something you want to describe  
23 to the Court?

24 A Yes. On or about May 3rd of 2010 I, or just a few days  
25 before that, I spoke with John Doe 1. Presented him with a

1 deal at 335 Madison Avenue in New York City. At the time  
2 that, most of the time that I was discussing with him that  
3 deal I was in the Eastern District of New York.

4 That deal I told him I was going to be contract on and  
5 attempting to assign it to a third party for a profit. I  
6 told him that for a specific of time, there will be a due  
7 diligence period under which our deposit that we'd be handing  
8 to seller would be fully refundable. In the event that we  
9 decided not to proceed with the transaction we will be able  
10 to get back our money. There's no risk to us here except for  
11 the time loss and having the money to available elsewhere.

12 I made representations to him that I'll be entering into  
13 a contract to purchase the property. That the money will be  
14 held by a third party escrow agent or an attorney  
15 representing the seller perhaps. And I told him that at all  
16 times his money will be safe and secure.

17 My intention while telling him this was to induce him to  
18 give me that 7 million, to give me money. My intention while  
19 telling him this was two fold. One was ultimately maybe to  
20 give him back the money. But at the time that I was telling  
21 it to him, I knowingly told him to give me that money while  
22 knowing that for that specific deal I was not going to put  
23 the money into that deal.

24 And there's no way he would give me necessarily that  
25 money just by telling him that I wanted to use it elsewhere

1 or use it for my own benefit or use it for gambling, or use  
2 it to pay back other investors, right.

3 So he gave it to me specifically because of the fact  
4 that I told him it was going to be for this deal. It was  
5 going to be under a protected environment, the money, such as  
6 an escrow agent or some other kind of fiduciary.

7 Additionally, yeah, I mean, he went into the deal  
8 knowing full faith and confidence that his money will be  
9 protected. And there's no way that his money would ever be  
10 lost or otherwise not available to be given back to him at  
11 the time that he was expecting to originally receive it back.

12 And in fact, subsequent to those conversations with John  
13 Doe 1, he wired at my direction \$7 million. And I  
14 subsequently completely misappropriated those funds and did  
15 not use it for the, and did not use that money for the  
16 purposes of why he sent it to me. And I misrepresented the  
17 facts all together as relates to my presentation to him. And  
18 for --

19 Q And then with respect to John Doe 1 and 2, were there  
20 other transactions with those individuals that you did, made  
21 representations to those individuals to secure funds from  
22 them which at the time you made the representations you knew  
23 were false?

24 A Yes.

25 Q All right. And those monies that you obtained under

Barkany-Court

70

1 false pretenses from either John Doe 1 or 2, other than the  
2 one you described, were those monies wire transferred to you,  
3 to your account or to account --

4 A They were, some were wire transfers, sure. Some were,  
5 for the most part nowadays people do -- yes.

6 Q Okay. So some were wire transferred. But wire  
7 transfers were effected, correct?

8 A Yes, yes.

9 Q And these conversations with John Doe 1 and 2, did some  
10 of those conversations or transactions occur in the Eastern  
11 District of New York?

12 A Yes.

13 Q And with respect to those other transactions now, did  
14 you, that is, did you divert funds to other purposes than  
15 what you told them the monies were going to be used for?

16 A Yes.

17 Q All right.

18 THE COURT: Mr. Caffarone we've already gone  
19 through the Government's evidence. I think that with that  
20 specificity as to the count and with his admission to the  
21 general scheme, I believe there's sufficient information in  
22 the allocution, but I'll hear from you.

23 MR. CAFFARONE: I agree Your Honor. The Government  
24 agrees that it satisfies the charged crime.

25 THE COURT: All right. And it is the basis as I

Colloquy

71

1 understand it for the \$63 million forfeiture, is that right?

2 MR. CAFFARONE: Yes, Your Honor.

3 THE COURT: All right.

4 MR. CAFFARONE: Yes, the \$63 million is the monies  
5 that John Doe 1, -- the first set of victims, gave to the  
6 defendant as the basis --

7 THE COURT: 62 million, I'm sorry.

8 BY THE COURT:

9 Q And you, I saw a reaction from you Mr. Barkany. What  
10 was the reaction?

11 A I'm sorry Judge?

12 Q I don't know. He, I thought that he took exception  
13 to the Government's claim that this scheme that was outlined  
14 was the basis for the \$62 million forfeiture.

15 A No, that is the basis for the forfeiture.

16 Q Okay, that is all I need to know.

17 THE COURT: All right, after hearing the  
18 defendant's allocution and the Government's evidence, I find  
19 that there is a factual basis for the plea. I find that the  
20 defendant has knowingly and voluntarily entered into this  
21 plea and fully understands the consequences and rights that  
22 he has. And the consequences of the plea. And I therefore  
23 accept his plea of guilty to the information, and would  
24 recommend that Judge Wexler do the same.

25 All right. I think that should be all. Is there

Court/plea

72

1 anything else from the Government?

2 MR. CAFFARONE: No, Your Honor.

3 THE COURT: Mr. Berket any other application?

4 MR. BARKET: No, just I would like to be present or  
5 a member of firm be present when he is interviewed by  
6 probation.

7 THE COURT: Typically I don't pass that information  
8 to probation. Just make your client is aware, and insists on  
9 that when he is called by probation.

10 I don't have a sentencing date. That will be  
11 provided. Typically what Judge Wexler does is after he waits  
12 for the probation report and sends for a sentencing date.

13 All right, anything else I have to address.

14 MR. CAFFARONE: No, Your Honor, thank you.

15 MR. BERKET: No, thank you.

16 THE COURT: All right, thank you.

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C E R T I F I C A T I O N

I, **TRACY GRIBBEN**, court approved transcriber,  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

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/S/ TRACY GRIBBEN

TERRY GRIBBEN'S TRANSCRIPTION SERVICE DATE: July 24, 2013